

“Medical Care Access Protection Act of 2007” (MCAP Act, S. 243) Comprehensive Medical Liability Reform

Summary

Improves patient access to health care services and provides medical care by reducing the excessive burden the liability system places on the health care delivery system.

Scope:

This Act applies to all health care providers and health care institutions.

Reform Provisions:

➤ Ensure Timely Resolution of Claims

- Guarantees that health care lawsuits are filed no later than 3 years after the date of injury.
- Extends the statute of limitations for minors injured before age 6.

➤ Provide Fair and Just Compensation for Patient Injury

- Unlimited Economic Damages:
 - The bill provides full recovery from responsible parties including necessary medical expenses and lost wages.
- Flexible Non-Economic Damages Cap:
 - The bill uses the Texas stacked cap model for non-economic damages, thus non-economical damages can total up to \$750,000.
 - Where a final judgment is rendered against a **health care provider**, non-economic damages shall be limited to an amount not to exceed \$250,000 for each claimant.
 - Where a final judgment is rendered against a **single health care institution**, non-economic damages shall be limited to an amount not to exceed \$250,000 for each claimant.
 - Where a final judgment is rendered against **more than one health care institution**, non-economic damages shall be limited to an amount not to exceed \$250,000 for each institution or \$500,000 for all institutions.

- The bill preserves states' rights by keeping medical liability statutes in place and by allowing future state laws to supersede federal limits on damages.
- Punitive Damages:
 - Permits punitive damages to be the greater of 2x the amount of economic damages awarded or \$250,000.
 - Raises the burden of proof for the award of punitive damages.
 - Protects providers who prescribe an FDA approved product for an indicated use. Such providers may not be party to a product liability suit involving that product.
- **Maximize Patient Recovery**
 - Where an attorney is paid on a contingency basis, the attorney is limited to 40% of the first \$50,000; 33.3% of the next \$50,000; 25% of the next \$500,000; and 15% of any amount exceeding \$600,000.
 - For personal injury awards exceeding \$50,000, future costs would be paid over time.
- **Establish Standards for Expert Witness Rule**
 - Experts must be licensed to practice in one or more states and be substantially familiar with the applicable standards of care and practice as they relate to the act or omission that is the subject of the claim.
 - An expert in one medical specialty or subspecialty may not testify against a physician in another medical specialty or subspecialty unless the expert demonstrates substantial familiarity between the two and demonstrates that the standards of care are similar.
- **Promote Fairness in Recovering Health Benefits and Preventing Double Recovery**
 - The amount of damages received shall be reduced by the amount of any other benefits (collateral sources) to which the claimant is entitled, less any amounts spent to obtain or secure such benefits.
 - Where benefits have been provided by a collateral source that has a right of recovery by reimbursement or subrogation and such right is permitted under state law, the award shall not be reduced.
- **Keep the Focus on the Patient**
 - Under a "fair share" model, each defendant would only be liable for those damages attributable to their fault, thus eliminating the incentive for attorneys to pursue "deep pocket" parties.
 - Attorneys who file frivolous lawsuits will be subject to Rule 11 sanctions with imposed fines.